

May 29, 2003

Gene Merriam, Commissioner  
Department of Natural Resources  
500 Lafayette Road  
St. Paul, Minnesota 55155-4047

RE: In the Matter of the Appeal of the Trespass Civil Citation and  
Penalty No. 53116 Issued to Thomas Joseph Krekelberg; OAH  
Docket No. 12-2000-15349-2

Dear Commissioner Merriam:

On April 2, 2003, a prehearing conference was held by telephone on the trespass citation listed above. Thomas J. Krekelberg and Conservation Officer Joel Heyn participated in the conference. The prehearing conference was tape-recorded. After discussing the matter at considerable length, it appeared to me that the only material factual issue was whether Mr. Krekelberg had walked on "agricultural land" in Rosemount on February 22, 2003, as alleged. Because Mr. Krekelberg and Officer Heyn each strongly insisted on their own view of the facts, I scheduled a visit to the site so that each of them could show what they had done or observed. We were to meet on April 16, 2003, at 12:00 p.m., at the weigh station on the southwest corner of 170<sup>th</sup> St. and Highway 3 in Rosemount, then proceed to the site of the alleged trespass.

On April 16, I arrived at the weigh station at 11:45 a.m. Officer Heyn arrived about 11:50 a.m. and the Dakota County Deputy Sheriff who was working with Officer Heyn on February 22, 2003, arrived about 11:55 a.m. At about 12:05 p.m., the Deputy and Officer Heyn received a call for assistance to locate and stop a vehicle and suspect fleeing from the scene of a burglary some distance south of the weigh station. The deputy left immediately to assist. By 12:10 p.m., Mr. Krekelberg had not arrived, so I told Officer Heyn that he could leave. He left to assist in the search. I saw no car approaching the intersection and also left the weigh station at 12:10 p.m. and returned to my office. Mr. Krekelberg called my secretary shortly thereafter to report that he had arrived at the weigh station about 12:10. I had her inform Mr. Krekelberg that I would not go back out to look at the site and would decide the case based upon documents submitted and the statements made during the April 2, 2003, telephone conference.

The facts are largely undisputed. On Saturday, February 22, 2002, Mr. Krekelberg took his dog for some exercise to the University of Minnesota's Rosemount Research Center, which is near his home and as he had done for several Saturdays. He also took his seven and eight year old sons. Another reason he went to the Research Center was to look for sheds, which are deer antlers dropped by the many

large deer on the Research Center's farm fields and other property. The Research Center is a few miles wide and high and mostly rural. Mr. Krekelberg is a long-time resident of the area and very familiar with the Research Center. He had previously known farmers in the area, but no longer does. The University occasionally issues permits to people to enter its lands to look for sheds, but Mr. Krekelberg did not know that and had no such permit.

Mr. Krekelberg drove to the Research Center, eventually parking on 170<sup>th</sup> St. between Annette and Blaine Avenues, which is near the center of the Research Center. He then walked along a road ditch toward a tree line between agricultural fields, with his boys and with the dog unleashed. He came out of ditch and up to a field of cut corn. He crossed the corner of the field to a the tree line, and left tracks in the snow that went 10 to 20 yards into the field. He then walked along the tree line. His boys were in the same area, and one of them went farther out into the field

On February 22, 2002, Officer Heyn and the Dakota County Deputy were patrolling the Research Center looking for trespassers. They routinely patrol there because the University regularly complains about the amount of trespassing that occurs on its land, both by people in vehicles and by people on foot, many looking for sheds. When Officer Heyn or the Deputy find a person on a Research Center field in a vehicle, they routinely issue a criminal citation for the trespass. When they stop a person walking on a field, they routinely issue a civil citation for the trespass.

Officer Heyn and the Deputy had just finished writing a criminal citation for trespass when they noticed what turned out to be Mr. Krekelberg and his sons. The Deputy sent Officer Heyn to check out the situation. Officer Heyn drove his truck to Mr. Krekelberg's SUV, saw at least two sets of tracks in the snow from the SUV go along the ditch, across the agricultural field, and then along the wood line. He did not see anyone, so he started to unload his four-wheeler so he could investigate further. He also radioed the Deputy to come assist. He then saw Mr. Krekelberg down the road and drove his truck down to talk with him.

After some discussion, Officer Heyn issued Mr. Krekelberg Trespass Civil Citation and Penalty, No. 53116, on which he described the recreational activity as "Other, hiking, walk dog/look sheds," and the violation as "Walk Ag Field/Dog & look for sheds." He checked the box indicating that the civil citation was being issued in lieu of a criminal charge for violation of Minn. Stat. § 97B.002, which the form described as "Trespassing on private land or posted land, or removing a sign posted to prevent trespass." He also checked the box for a first violation penalty of \$50.

Under Minn. Stat. § 97B.002, conservation officers, sheriffs, and deputies may issue civil trespass citations for trespasses in violation of Minn. Stat. § 97B.001. Under Minn. Stat. § 97B.001, subd. 2, a person may not enter agricultural land for outdoor recreational purposes without permission of the owner, except under circumstances that do not apply here. Under Minn. Stat. § 97B.001, subd. 1, "agricultural land" includes, among other things, land "that is plowed or tilled," or "that has standing crops of crop residues." Under Minn. Stat. § 97B.001, Subd. 1a. "Outdoor recreation" means:

. . . any voluntary activity, including hunting, fishing, trapping, boating, hiking, camping, and engaging in winter sports, which is conducted primarily for the purposes of pleasure, rest, or relaxation and is dependent upon or derives its principal benefit from natural surroundings.

Mr. Krekelberg was engaged in “outdoor recreation.” The field had been plowed at some point in the past and had crop residue on it, so it was “agricultural land.” Mr. Krekelberg did not have permission to enter the field. The only material issue is whether Mr. Krekelberg actually “entered” the field. Officer Heyn saw at least two sets of tracks that went 10 to 20 yards into the field. He was specifically looking for trespass violations that day, so he would have taken specific note of where the tracks went. Mr. Krekelberg stated during the telephone conference that he walked on the field, but said that he stayed near the edge and never entered any area that was cut or plowed. At the time, Mr. Krekelberg was not very likely to have been paying attention to exactly where he walked, so Officer Heyn’s statement is more likely to be accurate.

Mr. Krekelberg felt angry and embarrassed to be treated like a criminal in front of his children. He thought Officer Heyn’s behavior in approaching his SUV and searching the area was excessive. He argues that the law should have been explained to him and that he should have been given a warning instead of a civil citation. He also suggests that perhaps the tracks in the field belonged to his sons and not himself, or that the University land is public land not subject to the trespass law. Clearly, Mr. Krekelberg was not intentionally violating the trespass law, but even he admitted that he walked on the field to some degree.

Based on all the statements by Officer Heyn and Mr. Krekelberg, I find that Mr. Krekelberg entered onto the plowed portion of the field. Thus, Mr. Krekelberg did enter agricultural land for outdoor recreational purposes and without permission in violation of Minn. Stat. §§ 97B.001 and 97B.002. Therefore, Trespass Civil Citation and Penalty, No. 53116, was properly issued and should be affirmed.

I am closing our file in this matter. The record is enclosed with the exception of the tape of the telephone conference. If you would like a copy of the tape, please contact our office in writing or by telephone at 612-341-7448.

The law requires the final decision in this matter to be made by the Commissioner or his designee. The law<sup>[1]</sup> further requires that the Commissioner wait at least five days after receipt of this recommendation before making that final decision and permits Mr. Krekelberg to submit comments to the Commissioner on this recommendation within that five-day period. The Commissioner must send a copy of his final decision to Mr. Krekelberg. However, if the Commissioner fails to act within 90 days after the record before the Commissioner closes, this recommendation will become the final decision in this matter.<sup>[2]</sup>

Sincerely,

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STEVE M. MIHALCHICK  
Administrative Law Judge  
612-349-2544

cc: Thomas Krekelberg  
Conservation Officer Joel Heyn  
Pat Holt, DNR Enforcement

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<sup>[1]</sup> Minn. Stat. § 116.072, subd. 6(e).

<sup>[2]</sup> Minn. Stat. § 14.62, subd. 2a.